

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Feb 03, 2021

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

ROSHON E. THOMAS,

Defendant.

NO: 2:03-CR-129-RMP-1

ORDER DENYING DEFENDANT'S
MOTION FOR RECONSIDERATION
OF ORDER DENYING MOTION FOR
APPOINTMENT OF COUNSEL

BEFORE THE COURT is a motion by Defendant Roshon Thomas, on his own behalf, for reconsideration of the Court's prior Order denying his Motion for Appointment of Counsel. ECF Nos. 208 (Motion for Reconsideration) and 207 (Order Denying Motion for Appointment of Counsel). The Court denied Mr. Thomas's Motion for Appointment of Counsel because there are no further pending issues in the above-captioned matter after Mr. Thomas completed his sentence, and the Court terminated his supervision. ECF No. 207. Mr. Thomas clarifies in his Motion for Reconsideration that he seeks appointment of counsel to assist him in petition this Court for a writ of coram nobis. ECF No. 208 at 1.

ORDER DENYING DEFENDANT'S MOTION FOR RECONSIDERATION OF
ORDER DENYING MOTION FOR APPOINTMENT OF COUNSEL ~ 1

1 To the extent that a writ of coram nobis is equivalent to a habeas petition under
2 28 U.S.C. § 2255, appointment of counsel is not required and is authorized only upon
3 a showing that the “interests of justice so require.” 18 U.S.C. § 3006A(2); *see also*
4 Rule(c), Rules Governing Section 2255 Proceedings.

5 A writ of coram nobis is an extraordinary remedy available only in limited
6 circumstances. *Hirabayashi v. United States*, 828 F.2d 591, 604 (9th Cir. 1987). To
7 prevail on a coram nobis petition, Mr. Thomas would need to show that he is still
8 “suffering from the lingering collateral consequences of an unconstitutional or
9 unlawful conviction based on errors of fact and egregious legal errors.” *United States*
10 *v. Kwan*, 407 F.3d 1005, 1009–10 (9th Cir. 2005). Mr. Thomas would have to prove
11 the following four factors: “(1) a more usual remedy is not available; (2) valid
12 reasons exist for not attacking the conviction earlier; (3) adverse consequences exist
13 from the conviction sufficient to satisfy the case or controversy requirement of
14 Article III; and (4) the error is of the most fundamental character.” *Id.* at 1011
15 (quoting *McKinney v. United States*, 71 F.3d 779, 781–82 (9th Cir. 1995)). Adverse
16 consequences from a conviction are presumed. *United States v. Ramos-Quiroz*, No.
17 1:02-cr-05179-, 2021 U.S. Dist. LEXIS 9676, at *7-8 (E.D. Cal. Jan. 15, 2021).

18 Mr. Thomas already pursued two section 2255 petitions, ECF Nos. 92 and 179,
19 and a Rule 60(b), Fed. R. Civ. P., motion, ECF No. 114, in this matter, as well as a
20 direct appeal. The Court also appointed counsel to review Mr. Thomas’s eligibility
21 for relief under the United States Sentencing Commission’s Amendment 782. ECF

1 No. 195. All of those actions were fully litigated and none of those actions was
2 successful.

3 Moreover, the Court does not find an indication in Mr. Thomas's Motion for
4 Reconsideration, initial Motion for Appointment of Counsel, or through a review of
5 the record that a clear error of the most fundamental character occurred. Given the
6 lack of the required strong showing supporting an appointment of counsel, and given
7 the review and representation already afforded to Mr. Thomas, the Court does not
8 find that the interests of justice would be served by the appointment of counsel in this
9 matter.

10 Accordingly, **IT IS HEREBY ORDERED** that Defendant's Motion for
11 Reconsideration, **ECF No. 208**, is **DENIED**.

12 **IT IS SO ORDERED.** The District Court Clerk is directed to enter this Order
13 and provide copies to counsel and to Defendant at his last-provided address.

14 **DATED** February 3, 2021.

15
16 s/ Rosanna Malouf Peterson
ROSANNA MALOUF PETERSON
17 United States District Judge
18
19
20
21